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the promisee. In none of them were there, as here, plans and specifications to be complied with, of which compliance others could judge as well as the promisee. The case was likened to *Richison v. Mead*, 11 S. Dak. 639, 80 N. W. 131. See *MECHEM ON SALE*, §2663, et seq.

**DAMAGES—SALE—DUTY TO MINIMIZE LOSS.**—An action was brought to recover for the price of coal sold. Defendant by way of counter-claim showed that plaintiff, after agreeing to deliver coal on sixty days' credit, had wilfully refused to deliver any more on credit, and defendant sought to be allowed the difference between the contract price and the market price, which was considerably higher. To defeat the counter-claim, the plaintiff offered to show that some thirty days after refusing to supply the coal on credit, it had offered to supply it for cash at less than the contract price, the reduction being equal to interest upon the contract price for sixty days. *Held*, that such offer did not defeat the counter-claim. *Coxe v. Anoka Waterworks, etc., Co.* (1902), — Minn. —, 91 N. W. Rep. 265.

A substantially contrary result was reached in *Lawrence v. Porter*, 63 Fed. Rep. 62, 11 C. C. A. 27, 26 L. R. A. 167, *Mechem's Cases on Damages*, 326, where it was held that the buyer's duty to minimize his loss required him to buy for cash of the defaulting seller rather than to buy for a higher price of other parties. Reliance was there placed upon *Warren v. Stoddard*, 105 U. S. 224. The Minnesota court repudiates *Lawrence v. Porter*, because "it entirely abrogates the contract as made by the parties, and forces upon them another and wholly different one, made by the court. It enables one of the parties to escape a proper liability for a deliberate and indefensible violation of a bargain he had made, and allows a court to arbitrarily say that the value of a certain specified period of credit to a vendee is simply the interest he might have to pay to secure cash to take the place of the credit he has bargained for." Notwithstanding this criticism, however, the doctrine of *Lawrence v. Porter*, is well supported by many analogies in the law. See *MECHEM ON SALES*, § 1754, 1755 and notes.

**MANDAMUS—JURISDICTION TO ISSUE WRIT AGAINST THE GOVERNOR.**—A state statute declared that, immediately upon its going into effect, "the governor shall appoint" a board of commissioners. The validity of the act was established, but the governor refused to make the appointment. *Held*, that the court had jurisdiction to issue mandamus to compel the appointment. *State v. Savage*, (1902), — Neb. —, 90 N. W. Rep. 898.

The power to issue the writ of mandamus against the governor of a state has been much discussed and frequently adjudicated. (See *MECHEM ON PUB. OFF.* §§ 954-956.) It is everywhere conceded that no such jurisdiction exists where the performance of the act is one resting in his discretion, but where a plain duty of a ministerial nature is positively imposed upon the governor by law, it is held by many courts that the writ should issue. Among these courts, is the supreme court of Nebraska. *State v. Savage*, *supra*; *State v. Thayer*, 31 Neb. 82. The cases upon this question are fully collated in notes to 33 Am. Dec. 661; 31 Am. St. Rep. 294.

**MANDAMUS AGAINST OFFICER—ABATEMENT BY CHANGE OF OFFICER.**—Plaintiff brought an action against three certain persons, "loan commissioners of the territory of Arizona," to compel the refunding of certain bonds. Pending the proceedings, there was a complete change in the *personnel* of the commission, and this fact was pleaded as a bar to the issuing of the writ. *Held*, that the action did not thereby abate, and that the writ might issue against the present commission. *Murphy v. Utter*, (1902), — U. S. —, 22 Sup. Ct. Rep. 776.

The question when a suit against an individual in his official capacity abates by his retirement from office has been discussed in a number of cases before the supreme court, and a distinction taken between applications for a mandamus against the head of a department or bureau for a personal delinquency, and those against a continuing municipal board where there is a continuing duty and the delinquency is that of the board in its corporate capacity.